

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

	* * *	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	2:08-cv-01200-LDG -LRL
v.)	
)	ORDER
GUY W. PARKER,)	
)	
Defendants.)	
)	

Before the court is the government's Motion For Additional Sanctions For Civil Contempt. (#115). The court held a hearing on February 13, 2012. (#117).

Background

The present action was commenced to enforce a final decision issued by an Air Force Contracting Officer, which required defendant Parker to return to the Air Force certain computer hardware that he had taken without authorization. (#1). The court entered final judgment against defendant Parker on September 24, 2010. (#84). The court ordered defendant Parker to "turn over to the United States the hardware described in the complaint." *Id.* Despite this court's order, Parker failed to turn over the hardware. (#91).

On November 30, 2010, the government served defendant with its first set of post-judgment interrogatories, inquiring as to the location of the computer, the names of the persons who have knowledge of the computer's location, and the actions that defendant has taken to comply with the court's order. *Id.*

In response, defendant Parker emailed the government a PDF titled "Status 30Nov2010CaseClosed," that neither responded to the interrogatories nor was verified. (#91). On January 1, 2011, the government filed a motion to compel interrogatory answers (#85). The court granted the motion (#88), and ordered that defendant "shall provide responsive answers to plaintiff's

1 interrogatories not later than April 18, 2011.” Further, the court held that “Parker is admonished that
2 his failure to comply with the court’s orders may invite significant sanctions.” (#88). In response to
3 the court’s order, defendant Parker filed his second motion to dismiss for lack of subject matter
4 jurisdiction and to vacate judgment. (#89). The court denied defendant’s motion on October 31, 2011.
5 (#96). The court held that the defendant’s “position [regarding the lack of subject matter jurisdiction]
6 was rejected by this court twice before the entry of final judgment,” and that his other arguments also
7 lack merit. *Id.*

8 The defendant attached his responses to the interrogatories to the motion to dismiss (#89). Each
9 interrogatory was answered in the following manner: “Outside of statute, rule and jurisdiction. This is
10 not an 28 U.S.C. §3015, and Federal or Nevada rules of Civil Procedure Rule 69 financial question.”
11 (#89). Finding that these “answers” were non-responsive and not in compliance with the court’s order
12 (#88), the plaintiff filed a motion for sanctions (#91) and a motion to certify facts regarding contempt
13 of court (#95). On November 3, 2011, the court issued an order granting in part and denying in part the
14 government’s motion for sanctions. (#101). The court ordered defendant Parker to pay attorneys fees
15 in the amount of \$865.45. *Id.* The court also granted the government’s motion to certify facts (#95),
16 and, pursuant to 28 U.S.C. §636(e)(6)(B)(iii), certified that “the acts as described in th[e] order
17 constituting civil contempt ha[d] occurred.” *Id.* A hearing was scheduled for December 13, 2011,
18 before District Judge Lloyd D. George. *Id.* Defendant Parker was ordered “to show cause at this
19 hearing as to why the court should not find him in civil contempt and impose \$500.00 a day until he
20 provides answers to the interrogatories.” *Id.*

21 Defendant Parker failed to appear at the hearing, and the court directed the government to submit
22 to the court a proposed order of civil contempt and sanctions. (#111). The court signed the order of
23 civil contempt on that same day, and ordered defendant Parker to pay a civil fine of “\$500 each day
24 from the entry of [the contempt] Order until he purges himself of contempt by providing full and
25 truthful responses to the United States’ post-judgment interrogatories.” (#112). The court held that

1 defendant Parker may purge himself at any time by complying with the order by April 8, 2011, and that
2 if defendant Parker fails to purge himself within ten days from the order, the government may seek
3 further sanctions. *Id.*

4 Defendant Parker has not paid the attorneys fees, answered the interrogatories, or paid the \$500
5 a day civil fine. (#115). On January 5, 2012, the government filed the instant motion for additional
6 sanctions for civil contempt. *Id.* Defendant Parker did not file an opposition, but instead filed a
7 document titled “Notice of Adjudication of Facts 28 U.S.C. § 1491(a)(2) Jurisdiction requires dismiss
8 and void. No 28 U.S.C. § 1345 Jurisdiction. No 120 Day Summons Served. No Time Extension To
9 Serve,” which does not contain any arguments relating to the government’s request for additional
10 sanctions. (#116).

11 The court held a hearing on February 13, 2012, at 10:30 a.m. in Courtroom 3D, but defendant
12 Parker failed to appear. (#117). Prior to the hearing, the courtroom deputy called defendant Parker at
13 the number listed on the docket sheet to inquire as to his appearance, but the number was disconnected.
14 The courtroom deputy also e-mailed defendant Parker at the e-mail address listed on the docket sheet,
15 but defendant Parker did not respond.

16 **Motion For Additional Sanctions For Civil Contempt**

17 Since the imposition of civil contempt fines has failed to coerce defendant Parker to comply with
18 the court’s orders, the government asks this court to impose the sanction of incarceration upon
19 defendant Parker until he purges himself of civil contempt. (#115). During the hearing, the government
20 requested that this court certify that acts constituting civil contempt have occurred pursuant to 28 U.S.C.
21 §636(e)(6)(B)(iii).

22 If a moving party seeks an order of contempt from the court, they have the burden to establish
23 that (1) the respondent violated the court order, (2) beyond substantial compliance, (3) not based on a
24 good faith and reasonable interpretation of the order, (4) by clear and convincing evidence. *United*
25 *States v. Bright*, 596 F.3d 683, 694 (9th Cir. 2010). As the court stated in its previous order (#101),

1 under §636(e)(6)(B)(iii), if “the act constitutes civil contempt, the magistrate judge shall forthwith
2 certify the facts to a district judge and may serve or cause to be served, upon any person whose behavior
3 is brought into question..., an order requiring such person to appear before a district judge upon a day
4 certain to show cause why that person would not be adjudged in contempt by reason of the facts so
5 certified.” 28 U.S.C. §636(e)(6)(B)(iii). Upon such a certification, the “district judge shall thereupon
6 hear the evidence as to the act or conduct complained of, and if it is such as to warrant punishment,”
7 the district judge may punish such person. *Id.*

8 The court hereby certifies that the acts as described in this order constituting civil contempt have
9 occurred. 28 U.S.C. §636(e)(6)(B)(iii). In addition to defendant Parker’s previous act constituting
10 contempt, defendant Parker has not complied with the court’s order awarding attorney fees (#101), did
11 not appear at the show cause hearing (#111), has not complied with the court’s order requiring him to
12 pay \$500 a day (#112), and has failed to purge himself within ten days from the court’s contempt order
13 (#112). See *Bright*, at 694. Defendant Parker has made no attempt to comply with the court’s orders,
14 and defendant Parker’s non-responsive notice (#116) was not made in good faith, because it contains
15 the same arguments regarding subject matter jurisdiction that the court already rejected and other
16 unintelligible arguments that are not related to the interrogatories, the court’s contempt order, or the
17 government’s request for additional sanctions. *Id.* Therefore, the defendant is ordered to appear before
18 the district judge at a hearing to show cause as to why the court should not impose additional sanctions.

19 It is clear to the court, as demonstrated by defendant Parker’s failure to appear at the scheduled
20 hearing and continuous failure to comply with the court’s orders, that the present civil contempt
21 sanctions are not sufficiently coercive. See *International Union, United Mine Workers of America v.*
22 *Bagwell*, 512 U.S. 821, 827 (1994)(holding that “civil contempt sanctions, or those penalties designed
23 to compel future compliance with a court order, are considered to be coercive and avoidable through
24 obedience...”). Thus, this court recommends that the district judge impose sanctions in the form of
25 incarceration, whereby the defendant may purge himself by complying with the court’s orders and
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1 providing answers to the interrogatories. See *Bright*, 596 F.3d at 696 (holding that “[g]iven the remedial
2 purpose of the sanction, a finding of contempt must be accompanied by conditions by which contempt
3 may be purged, spelled out in either the original order or the contempt order.”) The Supreme Court has
4 held that the courts have the power “to impose conditional imprisonment for the purpose of compelling
5 a person to obey a valid order,” and that “[s]uch coercion, where the defendant carries the keys to
6 freedom in his willingness to comply with the court’s directive, is essentially a civil remedy designed
7 for the benefit of other parties and has quite properly been exercised for centuries to secure compliance
8 with judicial decrees.” *Uphaus v. Wyman*, 360 U.S. 72, 81 (1959)(quoting *Green v. United States*, 356
9 U.S. 165, 197 (1958)).

10 Since the civil contempt sanction of \$500 a day imposed by the court (#112) is not coercive, this
11 court recommends that the district judge end the civil contempt sanction as of the date of this court’s
12 hearing, February 13, 2012. See *International Union, United Mine Workers of America*, 512 U.S. at
13 827-828 (holding that criminal contempt is punitive and civil contempt should be coercive). This court
14 also recommends that the district judge enter judgment against the defendant in the amount of \$31,500
15 (sanctions incurred from December 12, 2011, through February 13, 2012, at the rate of \$500 per day),
16 plus the attorneys fees already imposed by the court (#101) in the amount of \$865.45, for a total
17 judgment of \$32,365.45. Pursuant to Fed. R. Civ. P. 54(b), this court recommends entry of final
18 judgment in this amount only and the express determination that there is no just reason for delay.
19 Defendant Parker has continued to violate the court’s orders, and there is no reason to further delay the
20 government’s ability to collect on this judgment. See Fed. R. Civ. P. 54(b).

21 Accordingly, and for good cause shown,

22 IT IS ORDERED that the government’s oral request for certification is GRANTED. The court
23 hereby certifies the acts as discussed above constituting civil contempt have occurred pursuant to 28
24 U.S.C. §363(e)(6)(B)(iii), and recommends that the district judge impose the additional sanction of
25 incarceration and enter final judgment against defendant Parker in the amount of \$32,365.45.

1 IT IS THEREFORE ORDERED that a hearing is scheduled for **Thursday, February 23, 2012**
2 **at 11:00 a.m.** before District Judge Lloyd D. George in Courtroom 6B at The Lloyd D. George
3 Courthouse, 333 Las Vegas Blvd South, Las Vegas, NV 89101. The defendant is ordered to show cause
4 at this hearing as to why the court should not further find him in civil contempt and impose the
5 additional sanction of incarceration until he answers the government's interrogatories.

6 DATED this 15th day of February 2012.

7 

8
9 **CAM FERENBACH**
UNITED STATES MAGISTRATE JUDGE